

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
PQ NEW YORK, INC., et al, Case No. 20-11266(JTD)  
Debtors. 824 Market Street  
Wilmington, Delaware 19801  
Friday, September 25, 2020

TRANSCRIPT OF TELEPHONIC HEARING  
BEFORE THE HONORABLE JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES VIA TELEPHONE:

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OFFICE OF THE U.S. TRUSTEE

For the Official Committee  
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(Appearances Continued)

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Also Appearing: John Burlacu  
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Steven Fleming  
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INDEX

	<u>Page</u>
<u>EMERGENCY MOTION RE: TAXES</u>	5
<u>MOTION FOR RELIEF FROM AUTOMATIC STAY RE: ZURICH</u>	14
<u>SECOND AMENDED COMBINED DISCLOSURE STATEMENT AND PLAN OF LIQUIDATION</u>	
<u>Comments by Mr. Madron</u>	16
<u>Presentment/Argument by Mr. Waxman</u>	18
<u>Comments by Mr. Lastowski</u>	33
<u>Court Decision</u>	

<u>EXHIBIT</u>	<u>IDENT.</u>	<u>EVID.</u>
Fleming First-Day Declaration		22
Fleming Confirmation Declaration		22
Burlacu Declaration		24

1 (Proceedings commence at 10:02 a.m.)

2 THE OPERATOR: Recording has begun and we are now  
3 live.

4 THE COURT: Thank you.

5 Good morning, everyone. This is Judge Dorsey.  
6 We're on the record in PQ New York, Inc., Case Number 20-  
7 11266.

8 I'll go ahead and turn it over to debtors' counsel.

9 MR. MADRON: Thank you very much, Your Honor. Good  
10 morning. This is Jason Madron of Richards, Layton & Finger,  
11 on behalf of the debtors and debtors-in-possession.

12 THE COURT: Mr. Madron --

13 MR. MADRON: (Indiscernible)

14 THE COURT: -- can you hold on for just one second,  
15 real quick?

16 I see there are some -- I see there are some folks  
17 trying to get into the Zoom meeting, but we can't identify  
18 who you are because you're using just numbers and unknown  
19 names. If we can't identify who you are, we don't let you  
20 into Zoom because we've had some people trying to get in,  
21 disrupting the proceedings. So, if you're on CourtCall and  
22 you want to be on Zoom, you're going to have to put your  
23 proper name into your Zoom meeting ID, so that we can let you  
24 in. Okay. Thank you.

25 Go ahead, Mr. Madron.

1 MR. MADRON: Thank you, Your Honor. Your Honor,  
2 again, we'd like to thank Your Honor for accommodating us  
3 today for this very important hearing in these Chapter 11  
4 cases, a hearing that is the culmination of a material amount  
5 of effort on behalf of many folks on the call today.

6 If I may, Your Honor, I will turn to the form of  
7 amended agenda that we filed in consultation with Your  
8 Honor's chambers yesterday afternoon and take it in order.

9 THE COURT: Okay.

10 MR. MADRON: Your Honor, Item Number 1 is the  
11 debtors' emergency motion. As background, on October [sic]  
12 22nd of 2020, the debtors filed the emergency motion that's  
13 before the Court today, along with a motion seeking to  
14 shorten notice, asking that the motion be considered by the  
15 Court at this morning's hearing immediately in advance of  
16 plan confirmation. Later, on September 22nd, 2020, Your  
17 Honor entered an order granting the motion to shorten and  
18 scheduling the emergency motion for hearing today and making  
19 the objection deadline to the motion due at this morning's  
20 hearing. And we very much thank Your Honor for accommodating  
21 that very tight timing and scheduling for this important  
22 matter.

23 Parenthetically, Your Honor, I'll note that, as of  
24 the commencement of this hearing, the debtors are unaware of  
25 any opposition to the relief requested in the emergency

1 motion.

2 By way of brief overview, the emergency motion  
3 seeks to do two things: First, it seeks to approve two  
4 stipulations, one with the City of Alexandria, Virginia, and  
5 one with the California Department of Tax and Fee and  
6 Administration. Both stipulations address generally  
7 undisputed priority sales tax claims and provide for the  
8 stipulated allowance of the priority tax claims in agreed  
9 reduced amounts, in exchange for providing the respective  
10 taxing authorities with certainty on the timing and assurance  
11 of collectability of the compromised claim amounts.

12 As discussed in our motion, Your Honor, given the  
13 debtors' extremely limited liquidity, the compromise of these  
14 claims conserves precious and important cash to enable the  
15 debtors and the creditors' committee to more competently move  
16 forward with a successful Chapter 11 plan process. Without  
17 the savings provided to the estates by these claim  
18 stipulations, the debtors' challenging cash position would be  
19 even more stressed.

20 Second, Your Honor, the emergency motion seeks to  
21 increase the cap in Your Honor's final taxes order entered in  
22 the earlier days of these cases by a total of \$98,000. So  
23 this would be, from \$35,000 in the final taxes order, up to a  
24 total of \$133,000 if the motion is granted. Put differently,  
25 the motion seeks to increase the taxes cap by the amount of

1 the settlement payments called for in the stipulations.

2 (Indiscernible) the initial thirty-five-thousand-  
3 dollar cap, the final taxes order requested such a limited  
4 cap, as the debtors believed, as of the petition date, that  
5 they had already taken care of pre-funding all of their pre-  
6 petition priority tax obligations prior to commencing the  
7 Chapter 11 cases. However, Your Honor, now, with the benefit  
8 of the bar date established by the Court in these cases, the  
9 previously unexpected tax claims of the City of Alexandria  
10 and the California Department of Tax and Fee Administration  
11 have come to light, and increasing the payment cap set forth  
12 in the final taxes order provides the debtors with sufficient  
13 court authorization to make the settlement payments called  
14 for in the stipulations.

15 If I may halt there, Your Honor, I do have a  
16 proffer from Mr. Fleming, who is on the phone with us via  
17 Zoom today that I would like to offer in further support of  
18 this motion.

19 THE COURT: Yes, go ahead. Thank you.

20 MR. MADRON: Thank you, Your Honor.

21 Your Honor, this is the proffer of Mr. Steven J.  
22 Fleming, the debtors' court-approved Chief Restructuring  
23 Officer. He is present at today's hearing through the  
24 Court's Zoom video conference link and through CourtCall.  
25 And if called to testify, he would testify under the penalty

1 of perjury as follows:

2 Mr. Fleming would testify that he is a principal at  
3 PricewaterhouseCoopers, LLP, and the leader of the firm's  
4 U.S. business recovery services practice, a position that he  
5 has held since 2016, after being a senior member in the group  
6 for seven years.

7 Mr. Fleming would testify that he has read the  
8 emergency motion that's before the Court for approval today,  
9 located at Docket Item 579, and is familiar with its contents  
10 and all of the attachments thereto, including the tax claim  
11 stipulations.

12 He would further testify that he, and those acting  
13 at his direction at PricewaterhouseCoopers, regularly monitor  
14 the official claims register maintained in these Chapter 11  
15 cases, and that he is generally familiar with any priority,  
16 secured, or administrative claims that have been filed  
17 against any of the debtors.

18 Mr. Fleming would further testify that he has  
19 reviewed and is specifically familiar with the priority tax  
20 claims filed by the City of Alexandria and the California  
21 Department of Tax and Fee Administration in these cases that  
22 are subject to the instant motion.

23 Mr. Fleming will testify that, while the debtors  
24 believed, as of the petition date, that they had paid any  
25 potentially valid priority tax claims that had arisen prior



1 to the petition date, subsequent to the establishment of the  
2 bar date in these Chapter 11 cases, certain taxing  
3 authorities, including the City of Alexandria and the  
4 California Department of Tax and Fee Administration filed  
5 pre-petition priority tax claims against the debtors'  
6 estates. Mr. Fleming would testify that he and those working  
7 at his direction at PricewaterhouseCoopers have carefully  
8 approved and reconciled the proofs of claim filed by the City  
9 of Alexandria and the California Department of Tax and Fee  
10 Administration that are subject to the motion before the  
11 Court this morning.

12 He would testify that, although there are a few  
13 minor discrepancies from the amounts asserted by the City of  
14 Alexandria and the California Department of Fee and Tax  
15 Administration, that, on the whole, he believes that the  
16 asserted liabilities in the claims is consistent with the  
17 books and records of the debtors, and that the claims are  
18 generally unobjectionable.

19 At the same time, however, Mr. Fleming would  
20 testify that the unexpected additional valid priority tax  
21 claim liabilities asserted by the City of Alexandria and the  
22 California Department of Tax and Fee Administration place a  
23 significant strain on the liquidity available in the debtors'  
24 estates to fund the pending joint Chapter 11 plan of the  
25 debtors and the creditors' committee.

1           As a result of the adverse impact on the debtors'  
2     liquidity position and in order to bolster the success of the  
3     Chapter 11 plan process in these cases, Mr. Fleming would  
4     testify that the debtors reached out to the City of  
5     Alexandria and the California Department of Tax and Fee  
6     Administration to discuss a potential economic settlement of  
7     the respective priority tax claims.

8           Mr. Fleming would further testify that these  
9     negotiations did not center on the validity of the claims,  
10    which is noted that the debtors generally do not contest.  
11    Rather, the negotiations, focused on offering the City of  
12    Alexandria and the California Department of Tax and Fee  
13    Administration certainty on the collectability of their  
14    claims, as well as on the timing of the payment, in exchange  
15    for agreeing to compromise the amount of the claims asserted.

16          Mr. Fleming would testify that these negotiations  
17    took place at his direction and were conducted at arm's  
18    length and with the utmost of good faith. Mr. Fleming would  
19    further testify that the result of these settlement  
20    discussions are the claim stipulations that are before the  
21    Court for approval today.

22          As set forth in the claims stipulation, the City of  
23    Alexandria and the California Department of Tax and Fee  
24    Administration have agreed to materially compromise the  
25    recovery on account of their claims, in exchange for

1 certainty that the compromised claims will be paid in full  
2 and will be paid promptly.

3 Mr. Fleming would further testify that, in his  
4 opinion, entry into the claims stipulations represents the  
5 sound exercise of the debtors' business judgment, and that  
6 the approval of the claims stipulations will conserve crucial  
7 liquidity in the debtors' estates, and will promote a  
8 successful Chapter 11 plan process. He would further testify  
9 that he believes the economic result achieved by the  
10 stipulations is in the very best interests of the debtors,  
11 their estates, and all parties-in-interest in these Chapter  
12 11 cases.

13 Finally, Mr. Fleming would testify that, other than  
14 a *de minimis* priority tax claim filed by the State of  
15 Illinois and a handful of priority claims asserted by the  
16 State of New York for interest on account of tax claims that  
17 the debtors paid pre-petition -- which the debtors dispute  
18 and have requested COVID-19 relief through an available  
19 portal with New York -- no other priority sales and use tax  
20 claims appear on the official claims register in the debtors'  
21 Chapter 11 cases; and, therefore, approval of the  
22 stipulations is not discriminatory to other similarly  
23 situated priority tax claim holders who have already filed  
24 claims in these Chapter 11 cases, and it is, thus, a fair and  
25 reasonable result.

1           Consequently, Your Honor, Mr. Fleming would testify  
2           that he believes that the approval of the motion that's  
3           pending before the Court today achieves numerous beneficial  
4           goals for these debtors and their estates. And as such, he  
5           believes the motion should be granted.

6           Your Honor, that concludes Mr. Fleming's direct  
7           testimony proffer. And as mentioned, he is on the line with  
8           us today, if Your Honor has questions or if any party with us  
9           today would like to cross-examine him.

10          THE COURT: Okay. Thank you, Mr. Madron.

11          Is there any objection to the admissibility of the  
12          proffer?

13          (No verbal response)

14          THE COURT: Okay. The proffer is admitted without  
15          objection.

16          Does anyone wish to cross-examine Mr. Fleming?

17          (No verbal response)

18          THE COURT: Having heard nothing, you can proceed,  
19          Mr. Madron. Thank you.

20          MR. MADRON: Thank you, Your Honor.

21          Your Honor, so, suffice it to say, and as set forth  
22          in the Fleming proffer in support of the emergency motion,  
23          the debtors believe that granting the relief requested in the  
24          emergency motion is very much in the best interests of the  
25          debtors and their estates and would provide material cash

1 savings and important cash savings to the estates, while  
2 supporting a successful Chapter 11 plan process. As such,  
3 Your Honor, the debtors respectfully request that Your Honor  
4 enter the proposed form of order granting the emergency  
5 motion, approving both the claims stipulations, and  
6 increasing the pre-petition payment cap set forth in the  
7 final taxes order in the amounts requested.

8 With that, Your Honor, I'm certainly very happy to  
9 answer any question that Your Honor may have with respect to  
10 the motion, the stipulations, or the relief that we're asking  
11 for this morning.

12 THE COURT: I do not have any questions.

13 Is there anyone else who wishes to be heard?

14 MR. FOX: Yes, Your Honor. Good morning. May it  
15 please the Court, Timothy Fox on behalf of the United States  
16 Trustee.

17 THE COURT: Yes, Mr. Fox. Go ahead.

18 MR. FOX: Good morning, Your Honor. I just would  
19 like to note on the record that I appreciate the debtors  
20 making the proffer that Mr. Madron just put on. That was at  
21 least partially in response to informal comments that my  
22 office raised when we were advised of the emergency motion.  
23 And under the circumstances here, my office has no objection  
24 to the relief being sought.

25 THE COURT: Thank you, Mr. Fox.

1                   Anyone else?

2                   (No verbal response)

3                   THE COURT: Okay. I'm satisfied, based on the  
4 record and the testimony presented here today, that the  
5 requested relief is appropriate, and I will enter that order.

6                   MR. MADRON: Thank you very much, Your Honor. I  
7 believe we have uploaded the order with its attachment for  
8 Your Honor's e-signature at the Court's convenience.

9                   THE COURT: Okay.

10                  MR. MADRON: Your Honor, Agenda Item Number 2 is a  
11 motion that was filed by the debtors to grant stay relief,  
12 really a matter of comfort.

13                  One of the debtors' insurers, Zurich, has --  
14 there's a law firm defending some ADA and other type of  
15 actions against the debtors. Zurich is responsible, under  
16 the policies, to pay the freight for the law firm. They  
17 wanted a comfort order that the automatic stay does not apply  
18 and that they can pay the law firm.

19                  So, working with counsel to the law firm at Elliott  
20 Greenleaf, you know, we filed this motion. The motion was  
21 unopposed. We filed a certificate of no objection and Your  
22 Honor entered an order earlier this week. We thank you for  
23 that.

24                  The only reason I bring up this matter is -- given  
25 that the order was entered, was to just note for Your Honor

1 that, apparently, the order that was entered, the law firm  
2 presented it to Zurich, and Zurich had some comments about it  
3 -- you know, I don't want -- to summarize it, you know, more  
4 or less not being sufficient specific. So Elliott Greenleaf  
5 and my firm and others are working on an amended and  
6 superceding form of order in connection with this matter that  
7 will have increased specificity as to the law suits that are  
8 at issue, with respect to which the firm will be paid.  
9 Again, this firm is not being paid from any cash in the  
10 debtors' estates or any property of the estates that's  
11 proceeds from insurance policies, and the firm is entitled to  
12 them.

13 So I just wanted to give Your Honor a heads-up. I  
14 mean, we anticipate, hopefully, later today submitting that  
15 under a certification of counsel for Your Honor's  
16 consideration, again, an amended and superseding order that  
17 has a little bit more meat on the bones to give Zurich  
18 comfort as to what they're paying and that they have  
19 authorization to do so and it's not a violation of the stay,  
20 so that will be forthcoming.

21 And if Your Honor has questions now, certainly  
22 happy to answer them, but I -- you know, we'll make that  
23 filing with a redline for Your Honor's consideration.

24 The only thing I'll note is that the law firm that  
25 is subject to the motion, that's subject to receive payment,

1 has a fiscal year end of September 30th, so they do have some  
2 sensitivity to trying to, you know, get an order that is  
3 acceptable to Zurich in advance of then. So, to further that  
4 goal, we will work to get the submission to Your Honor as  
5 promptly as possible today, appreciating that it is Friday  
6 and we're heading into the weekend.

7 THE COURT: Okay. I'll do my best to make sure the  
8 partners get their distribution at the end of the ...

9 MR. MADRON: I'm sure they are most grateful, Your  
10 Honor. Thank you.

11 Your Honor, that brings us then to Agenda Item 3,  
12 which is really the main event today. This is the hearing to  
13 consider final approval of the adequacy of the disclosure  
14 statement that Your Honor approved on an interim basis in  
15 late August, as well as confirmation of the joint Chapter 11  
16 plan of the debtors' and the creditors' committee, filed as  
17 co-proponents.

18 Your Honor, I'm pleased to -- and Mr. Waxman will  
19 do the heavy lifting on the presentation of this matter. But  
20 I am pleased to inform Your Honor that we are before the  
21 Court today on a fully uncontested basis.

22 As reflected on the agenda, we did receive one  
23 formal written response; we received two informal responses.  
24 Working very cooperatively with the creditors' committee and  
25 with the responding parties, we were able to achieve a



1 resolution of each of those responses via either addition of  
2 language into the second amended plan that we filed -- I  
3 believe it was late last week -- or through the confirmation  
4 order that has been uploaded for Your Honor's review this  
5 morning.

6 So, you know, the result of a lot of hard work by a  
7 lot of folks on the phone, and the debtors are certainly  
8 grateful of that. And we're very pleased to be before Your  
9 Honor today on an uncontested basis with a plan that the  
10 voting tabulation results show was overwhelmingly supported  
11 by Class 3 and 4 creditors who were entitled to vote and did  
12 vote on the plan.

13 So, having said that, and obviously stating at the  
14 outset that the debtors are a hundred percent supportive of  
15 confirmation of the plan and believe that, under the facts  
16 and circumstances of these cases -- which Your Honor will  
17 recall initially we're on track to be Chapter 7 case, and you  
18 know, but for a purchaser emerging pre-petition and making a  
19 Chapter 11 plan process possible, we wouldn't be here today  
20 on this matter.

21 And frankly, even after the cases filed, the case  
22 was contemplated, as Your Honor will recall, a sale process  
23 that was run on, you know, a reasonable, but tight time  
24 frame, to have a quick sale process, you know, on assets that  
25 were thoroughly marketed pre-petition. And then, ultimately,

1 you know, we were originally still looking at a dismissal or  
2 conversion scenario as of the petition date.

3 But fortunately, thanks to the hard work of the  
4 purchaser, the creditors' committee, the debtors, the  
5 negotiations and settlement that was embodied in the sale  
6 process involving those parties, some additional cash became  
7 available, and it set us on a path to be able to go down this  
8 road of a Chapter 11 plan, to get money out to unsecured  
9 creditors. So we're very pleased to be here today with this  
10 hard-fought result.

11 So, with that and the debtors' support, I will  
12 yield the virtual lectern to Mr. Waxman, who will make the  
13 primary presentation on presentation, Your Honor.

14 THE COURT: Thank you, Mr. Madron.

15 Mr. Waxman.

16 MR. WAXMAN: Good morning, Your Honor. Jeff Waxman  
17 of Morris James on behalf of the Official Committee of  
18 Unsecured Creditors. Good morning. I am joined today by  
19 Robert Gayda and Catherine LoTempio of Seward & Kissel, our  
20 co-counsel, and my colleague Brya Keilson.

21 Your Honor, more often than not, when I'm  
22 representing a debtor or creditors' committee in a  
23 confirmation hearing, I harken back to a line from Paradise  
24 Lost: "Long is the way and hard, that out of Hell leads up  
25 to light."

1           Your Honor, through this bankruptcy process, the  
2           debtors, together with the committee, have been able to sell  
3           the business, the debtors' business, as a going concern,  
4           saving hundreds, if not thousands of jobs, having millions of  
5           dollars of potential claims assumed by the purchaser. And at  
6           the end of the day, we stand before the Court seeking  
7           approval of the disclosure statement on a final basis and  
8           confirmation of a plan which will ultimately yield some  
9           distribution to general unsecured creditors.

10           Your Honor, both voting classes have voted to  
11           accept the plan, and all objections, whether formal or  
12           informal, have been resolved. So it is with pleasure, as Mr.  
13           Madron said, that we are here today with an uncontested  
14           hearing.

15           Your Honor, just solely by way of background -- and  
16           all of this is set forth in Mr. Fleming's declaration, first-  
17           day declaration, as well as in the pleadings in the case --  
18           the debtors were a restaurant chain. They were already  
19           having financial issues, but the straw that broke the camel's  
20           back was, of course, the COVID-19 pandemic. When the debtors  
21           had filed for bankruptcy, they had already agreed to -- they  
22           had already agreed with an affiliate of Aurify Brands for the  
23           sale of substantially all of the debtors' assets, and by  
24           which they had received financing for the case.

25           After the appointment of the committee, the

1 debtors, the committee, and the purchaser were able to  
2 negotiate a settlement that resolved the committee's  
3 opposition to the entry of the final order approving the  
4 final -- excuse me -- approving the financing motion and  
5 approving the sale. Among other things, the settlement  
6 increased the cash component of the purchase price and also  
7 left behind certain claims and causes of action for the  
8 estate, and those are the corpus of the trust going forward.  
9 The sale closed on June 30th of this year, and the plan is  
10 the next step toward winding down the debtors' estates for  
11 the benefit of all shareholders.

12 Your Honor, I would just start off by pointing out  
13 the case filings, which I think are significant, in order to  
14 set a record.

15 On August 7th, the plan proponents -- and this is a  
16 joint plan of the debtors and the committee -- filed the  
17 motion to approve the disclosure statement on an interim  
18 basis and seeking solicitation procedures. Substantially  
19 contemporaneously, the debtors filed the joint plan.

20 On August 20th, the plan proponents filed the  
21 amended Chapter 11 combined plan and disclosure statement --  
22 excuse me. On August 24th, the Court entered the order  
23 granting the solicitation motion, by which the disclosure  
24 statement was approved on an interim basis and solicitation  
25 procedures were approved that, among other things, set today

1 as the confirmation hearing.

2 On August 20th, the plan proponents filed an  
3 amended plan.

4 And in compliance with the Court's solicitation  
5 procedures order, on August 26th, the plan proponents caused  
6 the solicitation materials to be mailed out to all creditors  
7 and parties-in-interest.

8 Also, on the 27th of August, there was a notice of  
9 confirmation hearing that was published in the USA Today  
10 National Edition.

11 On August 20th, the plan proponents filed the  
12 second -- excuse me.

13 On September 18th, the plan proponents filed a  
14 supplement to the plan, as well as the second amended  
15 combined disclosure statement and plan.

16 This week, Your Honor, there have been a flurry of  
17 filings. First is the declaration of Mr. Fleming in support  
18 of confirmation. There was also a memorandum of law that was  
19 filed yesterday and the proposed confirmation order.

20 Your Honor, this morning we filed an amended --  
21 excuse me -- a revised form of confirmation order and a  
22 blackline, and we have forwarded a copy to chambers. We've  
23 also circulated it to the Office of the United States  
24 Trustee, Mr. Fox, as well as some of the other parties who  
25 had provided comments and formal objections.

1           For the facts, Your Honor, Mr. Fleming, the  
2           debtors' CRO -- as you will note from Mr. Madron's  
3           presentation earlier -- is in the virtual court today and  
4           available to testify. Subject to cross-examination, we would  
5           seek to introduce his first-day declaration and his  
6           declaration in support of confirmation as direct evidence in  
7           support of confirmation today.

8           THE COURT: Is there --

9           MR. WAXMAN: Among other things --

10          THE COURT: Wait. Why don't we get that into  
11          evidence? Is there objection to the introduction of Mr.  
12          Fleming's declaration?

13          (No verbal response)

14          THE COURT: Okay. It's admitted without objection.

15          (Fleming First-Day Declaration received in evidence)

16          (Fleming Confirmation Declaration received in evidence)

17          THE COURT: Does anyone wish to cross Mr. Fleming?

18          (No verbal response)

19          THE COURT: Okay. Having heard nothing, you may  
20          proceed, Mr. Waxman.

21          MR. WAXMAN: Thank you, Your Honor.

22          I would just note three items from Mr. Fleming's  
23          declaration in support of confirmation:

24          That the liquidation is not likely to be followed  
25          by the need for further reorganization of the debtors;

1           That each holder of a claim or equity interest has  
2 either accepted (indiscernible) -- excuse me -- accepted the  
3 plan or will receive or retain under the plan, on account of  
4 such claim or equity interest, property of a value that's not  
5 less than the amount that such holder would have received or  
6 retained had the debtors been liquidated under Chapter 7.

7           And with respect to the deemed substantive  
8 consolidation that's proposed in Section 6.07 of the dis --  
9 of the plan, the case law supports the deemed substantive  
10 consolidation because the assets and liabilities are so  
11 intertwined that separating them would be prohibitive, and  
12 any attempt to do so would hurt all creditors.

13           I would note that there would also be significant  
14 administrative expenses because of the need to keep the --  
15 all of the cases open. And given that there are over 100  
16 cases, the U.S. Trustee fees in this case would be  
17 prohibitive.

18           Your Honor, I would also seek to admit into  
19 evidence the declaration of John Burlacu of Donlin Recano,  
20 who is not here today, although he is available to attend,  
21 should anybody wish to cross-examine him. I would seek to  
22 introduce his affidavit of service of the plan and  
23 solicitation materials and his voting declaration, which was  
24 submitted on Tuesday of this week of direct evidence, subject  
25 to cross-examination.

1 THE COURT: Is there any objection to the  
2 introduction of the declaration?

3 (No verbal response)

4 THE COURT: Admitted without objection.

5 (Burlacu Declaration received in evidence)

6 Anyone wish to cross?

7 (No verbal response)

8 THE COURT: We're good to go, Mr. Waxman. Thank  
9 you.

10 MR. WAXMAN: Among other things, Mr. Burlacu would  
11 testify that the plan and solicitation materials were served  
12 as required under this Court's order. They are -- that, as  
13 set forth in his declaration, which contained a tabulation of  
14 all ballots received and demonstrated evidence in support of  
15 the plan. As set forth therein, there were 28 ballots  
16 submitted for Class 3, in the aggregate amount of \$52,574.35.  
17 All 28 voted unanimously to accept the plan.

18 Further, the other class that's eligible to vote,  
19 Class 4, which is general unsecured claims, we received 37  
20 ballots, in the aggregate amount of approximately  
21 \$19,592,624.56. Of those Class 4 ballots -- again, there  
22 were 37 -- 32 of them, in the aggregate amount of  
23 approximately \$15,717,919 and change -- which is 80.22  
24 percent in dollar amount and 86.5 percent in ballot number --  
25 voted to accept (indiscernible) applied ballots that voted to



1 reject, totaling 13.5 percent in number and approximately  
2 19.78 in terms of amount. So, accordingly, both of the  
3 classes voted to accept the plan.

4 Your Honor, I move Mr. Burlacu's declaration into  
5 evidence.

6 THE COURT: Any objection?

7 (No verbal response)

8 THE COURT: It's admitted without objection.

9 Just to -- I guess, partly, just to show I actually  
10 read this stuff, on Page 8 of the motion, I think there's an  
11 error, when you talk about the Class 4 ballots received. You  
12 talk about those who accepted, which was 15.7 million of the  
13 19.6 million. But then, when you talk about those who  
14 rejected, the 5 claims, you again refer to as 15.7 million,  
15 instead of the 4 point whatever million that it would  
16 actually be, so ... I assume it's correct --

17 MR. WAXMAN: Your --

18 THE COURT: -- in the affidavit, I think it's  
19 correct in the affidavit. I looked at that, I didn't see  
20 that there was an error in there, but just to make sure the  
21 record is clear.

22 MR. WAXMAN: Your Honor, you are correct and I  
23 apologize. The number that has voted to reject is  
24 approximately 3,874,700 odd dollars. And again, that's a  
25 little under 20 percent. So the plan voting does vote to

1 accept.

2 THE COURT: Okay. Thank you.

3 MR. WAXMAN: And Your Honor, not to pile on, but  
4 there is one housekeeping matter that I was asked to address  
5 today. And again, not that it changes the calculus of the  
6 plan voting, but we received a ballot this morning from  
7 counsel for Cuisine Solutions. They voted to accept the plan  
8 as a Class 4 claim in the amount of \$184,771.90, and they did  
9 not check the box for -- with respect to the releases. We  
10 just seek to ask that the ballot be allowed under Rule  
11 3018(a).

12 THE COURT: Okay. The ballot is allowed. Thank  
13 you.

14 MR. WAXMAN: Thank you.

15 Before moving on, I -- well, I will address this in  
16 the next section. But Your Honor, as noted earlier, the  
17 disclosure statement was approved on an interim basis. And  
18 so, in addition to going forward with respect to confirmation  
19 of a plan, the plan proponents are also seeking approval of  
20 the disclosure statement on a final basis pursuant to Section  
21 1125 of the Bankruptcy Code.

22 Your Honor, just looking down the list of the items  
23 that have been disclosed, we would -- it addresses:

24 The circumstances that gave rise to the debtors'  
25 Chapter 11 bankruptcy;

1           The debtors' actions and conditions during these  
2 cases;

3           The assets of the estate remaining after the sale;

4           An estimate of the estate's liabilities;

5           The proposed treatment of claims and interests  
6 under the plan;

7           An analysis as to the distributions creditors will  
8 receive from the estate if the estates were liquidated under  
9 Chapter 7;

10          A summary of the remaining assets left to be  
11 liquidated after the effective date;

12          A disclaimer stating that no statements or  
13 information regarding the debtors, their assets, or  
14 securities are authorized, other than those (indiscernible)  
15 the plan;

16          The relevant sources of information contained in  
17 the plan;

18          Information regarding the liquidating trust,  
19 including the liquidating trustee and the proposed  
20 compensation;

21          Financial information necessary to allow a creditor  
22 to decide whether to approve or reject the plan;

23          Information regarding the risks that will be taken  
24 by holders of claims and interests prior to voting;

25          A description of the potential avoidance actions

1 and non-bankruptcy litigation that are liquidating trust  
2 assets;

3 The rights and abilities of the liquidating trustee  
4 to assert, compromise, or distort -- or dispose of causes of  
5 action without further notice to creditors or interest  
6 holders or authorization of the Court;

7 The tax consequences of the plan.

8 There is also conspicuous language regarding the  
9 releases of the debtors and of third parties, exculpation and  
10 limitation of liabilities, and the injunction to be entered,  
11 and such other and further information as may provide  
12 creditors and other interest holders with information needed  
13 to determine whether it's in their best interests to vote in  
14 support or against the plan.

15 The plan proponents would also ask that the Court  
16 take judicial notice of the filings in this case, many of  
17 which were referred to by the disclosure statement.

18 And with that, based on the foregoing, the plan  
19 proponents request approval of the disclosure statement  
20 pursuant to Section 1125 on a final basis.

21 THE COURT: Does anyone else wish to be heard?

22 (No verbal response)

23 THE COURT: Okay. I'm satisfied, based on the  
24 record -- and I will take judicial notice of the record --  
25 and the presentations today that the disclosure statement

1 complies with the requirements of 1125 of the Code, and I  
2 will approve that on a final basis.

3 MR. WAXMAN: Thank you, Your Honor.

4 With respect to the plan, Your Honor, there are six  
5 classified -- six classes of claims, in addition to  
6 unclassified claims arising under Sections 507(a)(2),  
7 507(a)(8). Your Honor, those classes are Class 1, which are  
8 secured claims; Class 2, priority non-tax claims, both of  
9 which are unimpaired and presumed to have accepted.

10 Class 3 is a convenience class of general unsecured  
11 claims. Class 4 are general unsecured claims. Both Class 3  
12 and 4 are impaired and entitled to vote. Those are the only  
13 voting classes in the plan, Your Honor.

14 Class 5, which are intercompany claims; and Class  
15 6, which are equity interests, both will receive nothing  
16 under the plan and are impaired and conclusively presumed to  
17 reject the plan.

18 Before moving forward, I do want to note that there  
19 is one significant option in the plan with respect to  
20 classification of claims, which the plan proponents noted at  
21 the hearing to consider the solicitation of the plan. Class  
22 3 is a convenience class, which includes all claims of less  
23 than \$2,500. In order to minimize expenses in connection  
24 with the review of such claims and objections, if  
25 appropriate, the plan provided that Class 3 claims that are

1 not the subject of rejection on the effective date will be  
2 allowed claims, for which they will receive 5 percent of the  
3 amount of their claims in full satisfaction on or shortly  
4 after the effective date as practicable.

5 Holders of claims in excess of 2,500 had the option  
6 of electing into Class 3, but there is a caveat. If a claim  
7 holder or a holder of a claim that is over \$2,500 opted into  
8 Class 3, their cap would be -- their claim would be capped at  
9 \$2,500.

10 Your Honor, there were -- excuse me, as I look at  
11 my notes. I believe that there were 18 claims that opted  
12 into Class 3. Excuse me. There were 16 ballots from holders  
13 of Class 4 that elected to have their claims treated as a  
14 Class 3 claim for election and distribution purposes. And  
15 those had an aggregate value of approximately \$444,713.26.

16 Your Honor, that has -- let me take a pause and ask  
17 if Your Honor has any questions thus far, before moving on to  
18 approval of the plan under Section 1129.

19 THE COURT: No, no questions. Thank you.

20 MR. WAXMAN: Your Honor, based on the foregoing,  
21 the plan proponents respectfully submit that the plan and  
22 disclosure statement (indiscernible) classify the claims and  
23 equity interests under Section 1122.

24 Further, the plan satisfies the seven mandatory  
25 plan requirements in Section 1123(a)(1) through (a)(7).

1           The discretionary contents of the combined plan and  
2 disclosure are appropriate.

3           The releases provided in the combined plan and  
4 disclosure statement are proper and appropriate.

5           The debtors have complied with the applicable  
6 provisions of Section 1129(a)(2) of the Code.

7           The plan has been proposed in good faith and not by  
8 any means forbidden by law.

9           The plan provides for Bankruptcy Court approval of  
10 certain administrative payments.

11           Information has been disclosed about the post-  
12 emergence directors and officers and is consistent with  
13 public policy, thereby satisfying Section 1129(a)(5).

14           The plan complies with the applicable  
15 (indiscernible) of the Bankruptcy Code.

16           The plan does not require governmental regulatory  
17 approval.

18           The plan is in the best interests of the creditors  
19 and interest holders.

20           The plan complies with the statutory mandated  
21 treatment of administrative and priority tax liens.

22           The plan was accepted by two impaired classes.

23           The plan is feasible and provides for the payment  
24 of all fees under Section 1930 of Title 28.

25           The plan does not modify retiree benefits.

1 And finally, Your Honor, because there are two non-  
2 consenting classes, the plan satisfies the cramdown  
3 requirements of Section 1129.

4 Your Honor, do you have any questions?

5 THE COURT: I do not.

6 MR. WAXMAN: (Indiscernible) --

7 THE COURT: Thank you.

8 MR. WAXMAN: -- Your Honor.

9 Just moving on, we do -- we did receive two  
10 informal responses and one written objection from GRN. Your  
11 Honor, all three have been resolved.

12 The response that we received from Chubb has been  
13 resolved through modifications to the plan.

14 We received comments from counsel for a certain  
15 landlord, which addressed certain setoff issues. And as set  
16 forth in Paragraph 46 of the proposed confirmation order, we  
17 have added language to address that.

18 We've also received an objection from GRN, who is a  
19 warehouseman, who had some of the -- some of the debtors'  
20 records, which were transferred to the purchaser, and that  
21 has been resolved through Paragraph 27.

22 Your Honor, there was also some cleanup earlier  
23 today, and I'm happy to walk Your Honor through the blackline  
24 of the proposed order, if Your Honor would like, just to  
25 address what those cleanup items are.



1 THE COURT: I did receive it this morning. I have  
2 looked at the blackline. I see the handiwork of Mr. Fox in  
3 there, I think, the -- relating to the discharge provisions.  
4 So no need to walk through it, I've reviewed that.

5 MR. WAXMAN: Thank you, Your Honor.

6 Unless Your Honor has any questions, we would ask  
7 the Court to enter the proposed findings of fact and  
8 conclusions of law approving the disclosure statement on a  
9 final basis and confirming the plan.

10 THE COURT: Okay. Does anyone else wish to be  
11 heard?

12 MR. LASTOWSKI: Your Honor, this is Mike Lastowski  
13 of Duane Morris of Chubb. Can you hear me, sir?

14 THE COURT: I can, thank you.

15 MR. LASTOWSKI: Your Honor, I'm sorry. I tried to  
16 connect with Zoom and couldn't get a prompt asking me for my  
17 name. I'll figure that out some other time. I'm sorry for  
18 not having dialed in.

19 I represent Chubb, and we've worked with Mr. Waxman  
20 to resolve our informal comments, and we were successful.  
21 The language in the plan in Section 6.09 satisfies our  
22 comments, and supplemented by Paragraph 44 of the revised  
23 order. Read in harmony, they resolve all the issues that we  
24 raised.

25 THE COURT: Okay.

1 MR. LASTOWSKI: And I thank him --

2 THE COURT: Thank you.

3 MR. LASTOWSKI: -- for his patience and his  
4 cooperation. Thank you.

5 THE COURT: Thank you.

6 Anyone else?

7 (No verbal response)

8 THE COURT: Okay. I'm satisfied, based on the  
9 record presented, that the -- I'm sorry. Does someone else  
10 want to speak? No. Okay.

11 I'm satisfied, based on the record presented, that  
12 the plan was proposed in good faith. It complies with the  
13 requirements of the Code, including Sections 1122, 1123, and  
14 1129, and I will enter the order approving the plan.

15 And I'll just add my congratulations to everybody  
16 for getting this company from the brink of Chapter 7 to a  
17 Chapter 11 resolution that preserves jobs and a company, and  
18 hopefully, we'll get past this COVID-19 pandemic stuff and be  
19 back to operating restaurants on a regular basis. Thank you  
20 all very much.

21 Is there anything further for today?

22 (Participants speak simultaneously)

23 MR. MADRON: This is Jason Madron of Richards  
24 Layton again.

25 Your Honor, I just wanted to take a brief moment,

1 from the debtors' perspective, to extend our sincerest of  
2 thanks to Your Honor, to Your Honor's entire staff and  
3 chambers for the Court's guidance and the numerous scheduling  
4 accommodations that the Court has granted to us throughout  
5 these cases.

6 I want to thank the committee for their tireless  
7 professionalism. The committee, Mr. Waxman, his colleagues  
8 at Morris James and his colleagues at Seward & Kissel have  
9 been truly exceptional partners in these cases, to bring them  
10 to what I think is the absolute best conclusion that we could  
11 have hoped for.

12 And then lastly, but certainly not least, Your  
13 Honor, I would like to thank Mr. Fox and the Office of the  
14 United States Trustee, who, without exception, from day one  
15 in these cases -- or even a few days before we filed and  
16 working through the first-days, has always worked extremely  
17 responsively and constructively with the debtors to move  
18 these cases along. So a lot of folks deserve a lot of thanks  
19 for us getting to this result, and the debtors are certainly  
20 very grateful for each and every one and we would like to  
21 extend out thanks.

22 THE COURT: Okay. Thank you, Mr. Madron.

23 Was there somebody else who wanted to speak?

24 MR. WAXMAN: Your Honor, Mr. Madron beat me to the  
25 punch, as usual. I did want to take a moment and thank the

1 Court and chambers for all of its patience. And I also  
2 wanted to say, although you were hearing from me today,  
3 success has a thousand fathers, and in particular, we're here  
4 because of the hard work of debtors' counsel, in particular,  
5 Mr. Madron. Mr. Fleming has -- and his colleagues at PwC  
6 have been great to work with.

7 Also, I would be remiss were I not to mention the  
8 very hard work of my esteemed co-counsel Mr. Gayda and his  
9 colleague Ms. LoTempio of Seward & Kissel, and my colleagues  
10 Mr. Monzo and Ms. Keilson, all of whom have truly done  
11 yeoman's work.

12 I also wanted to thank Mr. Fox for, as always,  
13 being very easy to deal with and making himself available,  
14 even when he had very little availability.

15 THE COURT: Okay. Thank you, Mr. Waxman.

16 Anyone else?

17 (No verbal response)

18 THE COURT: All right. Thank you all very much.  
19 Congratulations again. And we are adjourned.

20 COUNSEL: Thank you, Your Honor. Thank you, Your  
21 Honor.

22 (Proceedings concluded at 10:45 a.m.)

23 \*\*\*\*\*

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

A handwritten signature in cursive script, appearing to read "Coleen Rand", is written over a horizontal line.

October 6, 2020

Coleen Rand, AAERT Cert. No. 341

Certified Court Transcriptionist

For Reliable